Oxford, April 22. 1734.

There is now drawn up, in order to be propoſed in Convocation, *an Inhibition to the* Wine-Cellars *lately opened in this Town; the Conſequences of which are of ſuch Importance, that they ought to be throughly conſidered by the Members of Convocation, before it be either paſſed or rejected.*

THIS Inhibition was at firſt ſet on Foot at the Requeſt of the Tavern-keepers; who no doubt had juſt Reaſon to complain, that others ſhould be permitted to ſell Wines in *Oxford*, when they had paid ſo dear for that Privilege; eſpecially ſince the Keepers of thoſe Cellars, having not been at that Expence, were thereby enabled to ſell better Wines, and at an eaſier Price. And this I am perſuaded was the principal Reaſon of the Complaint. —— But, whether it is Prudence in the Univerſity to inhibit them on that Account only, is a Queſtion. —— We ought certainly to conſult the Eaſe and Convenience of the ſeveral Members of the Univerſity; and when Laws are to be made to regulate any Branch of Trade in the Place, we ought to do it with Regard to the Goodneſs and Cheapneſs of the Commodities. We need not be afraid that Gentlemen will prefer bad Goods at a dearer Rate before better at a Cheaper. Theſe Cellars therefore muſt ſink without this extraordinary Expedient, if Gentlemen were worſe ſerved from thoſe Places than from our common Taverns. And if they are better ſerved, it will be a very great Hardſhip if they ſhould be debarred all Commerce with them. —— If our Privileges are to be made uſe of to enhance the Prices of Things, and encreaſe the Expences of the Univerſity, they then become Burthens to us; and whenever this ſhall be the Caſe, they ought rather to be laid aſide, than inſiſted on.

If it be ſaid, that theſe Cellars are deſtructive to the Diſcipline of the Place, I ſhould be glad to ſee it proved: For they are not Houſes of Entertainment as Taverns are, nor have they Conveniencies proper for the Reception of Scholars, and therefore cannot break in on our Diſcipline, by keeping Scholars late out of their Colleges, by tempting them to drink to Exceſs, *&c.* but Gentlemen muſt be obliged to drink in their own Chambers, under the immediate Eye of their Governors, which will undoubtedly be ſufficient Guard to them againſt tranſgreſſing the Rules of Diſcipline. This has really been the Caſe ſince theſe Cellars have been opened. The Complaint on which this Inhibition was founded, ſhews how little Taverns have been frequented; and the Deſign of it can be no other than to make them more frequented. But all ſober Men muſt be ſenſible of the Inconveniencies attending the going oft to Taverns; and our Statutes provide againſt it in the ſtrongeſt Manner. As long then as we have ſuch Laws, and there appear ſuch Inconveniencies ariſing from it, we need not fear any Attempt that ſhall be made to promote it. —— Beſides, if the promoting Diſcipline was the Motive, why are not the Tippling and Ale-houſes put down, which are much more deſtructive of our Diſcipline, and tend much more to corrupt our Youth? Will it not be a great Reflection on us to have it ſaid, That we keep up, or at leaſt connive

nive at more than 300 Ale-houſes of the very worſt Fame and Reputation, without any even the leaſt Offer of diſcommuning them, and exerciſe our Authority only on a few Wine-Vaults, that ſell only by Wholeſale, and for no other Reaſon, but becauſe they underſell and take away the Buſineſs from our Licenſed Taverns?

But it may be ſaid, That thoſe Cellars break in upon our Privileges. If we have any ſuch in this Caſe, it muſt be with regard to our licenſing Taverns: But I don't ſee how that is prejudiced by Gentlemens buying Wines at theſe Vaults, any more than by Mr. Vice-Chancellor's, and our Heads of Houſes, buying their Wines from *London* and *Southampton*. I fancy Mr. Vice-Chancellor will ſcarcely oblige himſelf and his Brethren to buy at our Taverns. Why then ſhould we oblige our ſelves? Have not we, and every Member of the Univerſity, the ſame Right to buy where we pleaſe, and as cheap as we can? And is not the diſcommuning theſe Vaults the Way to hinder us of this Right? Certainly it is; for our Heads of Houſes are Gentlemen of Fortune, and can afford to import their own Wines, or lay in large Stocks from the Importer at a cheap Price. Theſe therefore will ſuffer no Inconvenience by this Act. But the Caſe is otherwiſe with regard to the greateſt Part of the Univerſity; theſe muſt be oblig'd, if this Inhibition takes Place, to lay out their Money to a great Diſadvantage, and be ſupplied with bad Wines and bad Meaſure: Whereas in the preſent Caſe, they can lay out what they can afford, without any Diſadvantage at all. And if this is of any Service, ſurely our diſcommuning theſe Vaults muſt be a manifeſt Detriment.

Beſides, it ſhould be conſidered, before this Inhibition paſſes, Whether we really have a Power of diſcommuning or not. None of our Charters, except that of King *Charles* the Firſt, give us any ſuch; and this was never confirmed by Act of Parliament: And it was the Opinion of Lord Chancellor *Cowper*, on ſome former Inſtances of the Exerciſe of this Power, (which Opinion, with the Reaſons, may be ſeen in our City Books) that we had no ſuch Power, and that if the diſcommuned Perſons had a-mind to try it, an Action would lie againſt the Univerſity. This ſhould make us cautious how we uſe it too haſtily; for if we have no ſuch Right, we do the Perſons againſt whom it is exerciſed a very great Injury. —— There is indeed mention made in our Statutes of ſuch a Power, (*viz.* *Tit.* 15. §. 4, 5, 14. *Tit.* 17. §. 1. *Tit.* 20. §. 6. *Tit.* 21. §. 1, 6, 11, 15.) —— But in every one of theſe Inſtances, except the laſt, the Caſe in which it is to be uſed is diſtinctly mentioned, (which by the Way ſhews our Power to be only in thoſe Inſtances): And one of them in particular, *viz.* *De Oenopoliis ſeu Tabernis Vinariis*, *&c.* aſſigns this Puniſhment for receiving Scholars and entertaining them in Houſes or like Places, with Wine, *&c.* for the third Offence, after two pecuniary Mulcts, and only for a Time therein ſpecified. This ſeems to declare what the Right of the Univerſity is in this Caſe, *viz.* That Townſmen are to be diſcommuned, not for keeping Wine-Cellars and ſelling Wine, but for entertaining Scholars in their Houſes. —— This, I ſay, ſeems to be the ancient Diſcipline of the Univerſity; and it behoves the Convocation to conſider, Whether the Taverns themſelves are not, upon this Foot, more deſerving of ſuch an Inhibition than the Wine-Cellars in the preſent Queſtion, who never entertain Scholars at all. And as to the laſt Inſtance, *viz.* *Tit.* 21. §. 15. by which Townſmen are to be diſcommuned for oppoſing the Privileges of the Univerſity, That I think doth not reach the Caſe; for our Privileges are ſecure notwithſtanding. If indeed theſe People were to ſet up Taverns without Licence, there would be an Encroachment; but I hope ſome Diſtinction is to be made between Taverns and theſe Vaults: And if we conſult the Diſcipline of the Univerſity, we ought to be more afraid of Places where Gentlemen may be entertained at all Hours, and in all Companies, and concealed from the Notice of thoſe who

who are to inſpect into their Behaviour, than of thoſe where they only buy their Wines, and drink them in their private Chambers, in their ſeveral Colleges.

It may be ſaid, That the Chancellor of the Univerſity has, by our Statutes in this Caſe, a Diſcretionary Power: But how? Not of diſcommuning whom he pleaſes, or when he pleaſes, but only of proceeding to this Puniſhment immediately, without going thro' the previous Mulcts required by the Statutes; and even then, only in thoſe Caſes where the Circumſtances of the Crime, or the Crime itſelf ſhall ſeem to require it. —— This will appear plain enough from a Clauſe in the Statute, *De officio, poteſtate, & authoritate Cancellarii.* —— *Item contra ſtatuta Univerſitatis delinquentes, pœnâ corporali, mulctâ pecuniariâ, incarceratione, degradatione, ſuſpenſione graduum, diſcommunicatione, proſcriptione, bannitione ſive expulſione ab Academiâ, cenſuris Eccleſiaſticis, aut quocunque alio modo rationabili (prout qualitas delicti exiget, & quatenus ſtatutis & privilegiis Univerſitatis permiſſum eſt) reſpective punire.* —— *Etiam quoad interdictum, quo oppidani a commercio cum ſcholaribus & perſonis privilegiatis arcentur, vel privilegiatis perſonis privilegio interdicitur, (ſi delictum ipſius judicio mereri videbitur) protinus hoc diſcommunicationis fulmen vibrare; nec prævіarum mulctarum, quas poſcunt ſtatuta, præludia morari.* We ſee here what the Power of the Chancellor in this Caſe is, *viz.* Of diſcommuning Townſmen ſo far forth only as the Statutes and Privileges of the Univerſity permit it, with a Diſcretionary Power (if the Crime ſhall ſeem to him to deſerve it) of doing it forthwith, without inflicting any previous Mulcts. He can't then do it conſiſtently with our Statutes, unleſs in thoſe Inſtances where the Statutes preſcribe it. And that the Statutes do not preſcribe it with regard to thoſe Wine-Cellars, will appear from a Statute, *Tit.* 15. §. 5. in which is this Clauſe, *Oppidani (ſive privilegiati ſint ſive non) qui contra formam hujus ſtatuti ſcholares in illum finem, in domus vel loca hujuſmodi receperint, pro primâ vice decem ſolidos, pro ſecunda, viginti ſolidos Univerſitati numerent: ſi tertio, deliquerint per duos menſes, ſi quarto, per totum annum, commercium iis cum ſcholaribus & perſonis privilegiatis interdicatur; vel privilegium, ſi fuerint privilegiati.* This is the Law of the Univerſity with regard to Sellers of Wine, or Wine-Taverns, by which they are to be diſcommuned, not for ſelling Wine, but for entertaining Scholars in Houſes or like Places. And then if the Chancellor, or the Univerſity, are to diſcommune only *quatenus ſtatutis, &c. permiſſum eſt*; and the Statutes allow it only with regard to thoſe *qui ſcholares in illum finem in domus vel loca hujuſmodi receperint*, as ſeems to be very plain from the above-cited Paſſages; it is clear that we can have no Right in the preſent Caſe, ſince the Perſons mentioned in this Inhibition have not been proved, nor can they be proved to be guilty of any Offence *contra formam hujus ſtatuti.*

Theſe Thoughts are humbly offered to the Univerſity. There is the more Reaſon to conſider them at this Time, becauſe we are threatned with a Proſecution in Caſe the Inhibition takes Place. 'Tis only deſired that they may meet with a fair Examination, and be admitted only ſo far as they ſhall be found reaſonable.

Oxford July 13. 1741

The foregoing Papers were offered to the University in full
the Convocation thereof their Sence of the matter by rejecting their
of the present Inhibition was occasioned by the same Complex
in the same Papers, it is humbly submitted whether it should n
the same manner. For it does not seem right for the University
present conduct, when the nature and circumstances of the c
vied